

Untitled

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to)
the propriety of the rates and charges set forth in the)
following tariffs: M.D.T.E. Nos. 14 and 17, filed with the) D.T.E. 98-57
Department on August 27, 1999, to become effective)
September 27, 1999, by New England Telephone)
Telegraph Company d/b/a Bell Atlantic-Massachusetts.)

HEARING OFFICER RULING GRANTING Z-TEL COMMUNICATIONS'

LATE-FILED PETITION TO INTERVENE AS A LIMITED PARTICIPANT

I. BACKGROUND

On April 15, 1999, the Department issued a notice of public hearing and procedural conference in this docket which set a May 10, 1999 deadline for the filing of petitions to intervene. On November 10, 1999, the Department issued its latest revised procedural schedule in this docket. On November 10, 1999, Z-Tel Communications, Inc. ("Z-Tel") filed an untimely petition to intervene ("Petition") as a limited participant in this docket. On November 22, 1999, Z-Tel provided a supplemental letter ("Letter") in support of its late-filed Petition. The Department received no responses to either the Petition or the Letter.

II. LATE-FILED PETITION TO INTERVENE

A. Standard of Review

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the

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Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 216 (1983); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also *Robinson v. Department of Public Utilities*, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Boston Edison*, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings (*id.*).

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See *Bay State Gas Company*,

D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient and orderly fashion. When balancing, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 5 (1993); *NYNEX*, D.P.U. 94-50 at 3 (1994).

B. Position of the Parties

Z-Tel states that it is a competitive local exchange carrier ("CLEC") with a principal place of business at 601 South Harbour Island Boulevard, Suite 220, Tampa, FL 33602 (Petition at 1). Z-Tel states that, in June 1999, it launched a residential service product in New York City and the surrounding areas that comprise LATA 132 and that Z-Tel's residential service offering in New York includes a package of long distance, unlimited local calling, voicemail, caller ID, "follow me," and a number of other enhanced services (*id.*). Z-Tel states that its residential customers may also purchase dial-up Internet access as part of their service package (*id.*).

Z-Tel asserts that, in New York, it purchases interconnection and unbundled network elements through Bell Atlantic tariffs, and in Massachusetts, Z-Tel similarly plans to purchase interconnection and unbundled network elements through Bell Atlantic tariffs (*id.* at 2). Z-Tel states that its business plan calls for a residential service roll-out in Massachusetts during the first quarter of 2000 (*id.*). Z-Tel indicates that whether and to what extent Z-Tel ultimately rolls out residential service in Massachusetts will in large part depend on the outcome of the present

proceedings (i.d.).

Z-Tel states that the terms, conditions, and prices of the tariffed interconnection and unbundled network element offerings under consideration in the present proceedings are necessary inputs to Z-Tel's retail residential service making it critical that Z-Tel have an opportunity to participate (Letter at 1). Z-Tel indicates that it only recently became aware of the present proceedings as it was developing its market entry strategy in Massachusetts and that, had Z-Tel been aware of this proceeding at its start, Z-Tel would have been an original party to the case (i.d.).

Z-Tel requests that its Petition to intervene as a limited participant be granted so that it may: (1) stay apprised of the state of regulatory affairs in Massachusetts; and (2) provide information to the Department regarding the actions that the Department should take to ensure residential competition (Petition at 2). The Department received no objections or comments to Z-Tel's late-filed Petition to Intervene.

C. Analysis and Findings

First, the Hearing Officer finds that Z-Tel is specifically and substantially affected by the present proceedings for the following reasons: (1) as part of its business plan to provide local residential exchange service in Massachusetts during the first quarter of 2000, Z-Tel indicates that it intends to purchase interconnection and unbundled network elements through the Bell Atlantic tariffs, namely, the tariffs under investigation in the present proceedings; and (2) Z-Tel claims that whether and to what extent it ultimately rolls out residential service in Massachusetts will in large part depend on the outcome of the present proceedings.

Second, the Hearing Officer finds that Z-Tel has made a convincing showing of good cause for the late-filed Petition. Z-Tel does not currently offer residential local exchange service in Massachusetts and, in its supplemental Letter, Z-Tel indicates that it only recently became aware of the present proceedings as it developed its market entry strategy for Massachusetts. The Hearing Officer notes that Z-Tel did not explicitly provide a basis for its delay in seeking to intervene until its supplemental letter and that the Department does not encourage subsequent filings to support late-filed petitions to intervene. Rather, a Petition to Intervene should be complete in all respects at the initial submission.

Last, in balancing the competing interests of Z-Tel's need to participate against the Department's need to conduct a proceeding in a complete, efficient and orderly fashion, the Hearing Officer finds that Z-Tel's delay in filing the petition to intervene will not cause undue prejudice to the other parties or delay this proceeding so long as Z-Tel adheres to the procedural schedule.

III. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants the Late-Filed Petition to Intervene filed by Z-Tel Communications, Inc. as a limited participant with the rights of receiving all documents filed by the Department and the parties, and the right to submit comments and/or briefs to the Department for consideration. As a limited participant, Z-Tel does not have the right to present witnesses, to cross-examine witnesses, or to appeal the final decision of the Department. Z-Tel shall abide by the procedural schedules set forth and any subsequent revisions and shall not delay these proceedings.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by December 6, 1999, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by December 9, 1999, at 5:00 p.m.

Date

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